No. 2471.

United States Circuit Court of Appeals for the Ninth Circuit.

OREGON-WASHINGTON RAILROAD AND NAVIGATION COMPANY, A CORPORATION, PLAINTIFF IN ERROR,

v.

THE UNITED STATES OF AMERICA, DEFENDANT IN ERROR.

UPON WRIT OF ERROR IN THE UNITED STATES DISTRICT COURT FOR THE EASTERN DISTRICT OF WASHINGTON, NORTHERN DIVISION.

Additional

BRIEF OF DEFENDANT IN ERROR.

FRANCIS A. GARRECHT,
United States Attorney.
PHILIP J. DOHERTY,
Special Assistant United States Attorney.

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United States Circuit Court of Appeals for the Ninth Circuit.

OREGON - WASHINGTON RAILROAD AND Navigation Company, a corporation, plaintiff in error, *v.* THE UNITED STATES OF AMERICA, Defendant in error.	No. 2471.

ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR THE EASTERN DISTRICT OF WASHINGTON.

BRIEF AND ARGUMENT OF DEFENDANT IN ERROR.

QUESTIONS INVOLVED.

I. Was the failure of this carrier to report the instances of excess service in question a violation of section 20 of the act to regulate commerce for which the United States can recover $100 a day?

II. Does the deposition in the record establish that no forms were served upon the carrier; and if so, does the fact that no service of forms was made establish a a defense?

ARGUMENT.

I.

The order with which the carrier is charged with noncompliance and upon which this action is based is set forth in the plaintiff's declaration. For convenience it may be here repeated: "It is ordered that all carriers subject to the provisions of the act entitled 'An act to promote the safety of employees

and travelers upon railroads by limiting the hours of service of employees thereon,' approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act."

This order would be fulfilled either by a single report containing all instances of excessive service or by a separate report for each such instance. It is not complied with, however, by a report containing all instances but one. In short, the thing required by the Commission is certain information and not merely a compliance with a certain monthly formality.

It follows that the carrier was in default with respect to its failure to make the report required by the Commission within the time fixed, and therefore incurred the penalty of $100 a day for such default provided by section 20.

Such has been the construction heretofore tacitly given to the section by the District Court in a suit by the United States to recover a penalty for a similar default. (*United States* v. *Chicago, M. & P. S. Ry. Co.* (D. C. Wash.) 195 Fed., 783. See also, *United States* v. *Yazoo & M. V. R. Co.* (D. C. W. D. Tenn.) 203 Fed., 159.)

While we have found no direct authority upon the question here presented, analogies are not wanting. In *Phile* v. *Anna,* (1 Dall., 197, 205) under a statute providing that " every vessel or boat from which any goods, wares, or merchandise shall be

unladed, before due entry thereof at the office of the collector of the port * * * shall be forfeited," and that " the master of any ship or vessel shall exhibit to the collector a true manifest of the goods, wares, and merchandise imported in such ship or vessel, and swear that there are no other on board, to the best of his knowledge and belief," it was held that the offense involving forfeiture of the vessel was committed by the delivery of a false manifest. The court said (p. 205):

> * * * If the master is obliged by law to deliver in a manifest, he does not comply, unless he exhibits a true and accurate one; and his committing perjury upon the occassion, so far from saving the vessel, must greatly increase the offense.

Again, in *134,901 Feet of Pine Lumber* (4 Blatch., 182), under a similar statute, it was held that it was immaterial whether the master of the vessel presented a false manifest or none at all. See also *Ellis* v. *Hartley* (1901), 27 Vict. L. R., 31.

The Circuit Court of Appeals in the case of *United States* v. *Northern Pacific Railway Company* (213 Fed., 162) relied largely on the hardship which would ensue as a consequence of the construction of section 20 for which we contend. But that is obviously a question for the consideration of Congress, and should not weigh against the clear language of the section. That language does not seem to us open to the construction placed upon it by the Circuit Court of Appeals. For the purpose

of the section, a failure to report any instance of excessive service is a failure to make a report required by the Commission; and it is immaterial whether or not that failure takes the form of an omission from a monthly report. Under any other interpretation, the statute inevitably gives the carrier a free hand in concealing violations of the hours of service act, without any recourse for the Government except punishment of the officer who verifies the report under oath on the charge of perjury in case knowledge on his part of its falsity can be shown. We submit that Congress did not intend thus to nullify the investigatory power of the Commission under section 20, or that the Commission in requiring such reports is doing a vain thing.

The validity of the order of the Interstate Commerce Commission was affirmed by the Supreme Court *in its application to the obligation of the carrier to report all specific instances of infraction of the hours of service law.*

The bill of the plaintiff in the Baltimore & Ohio case contained inter alia these allegations:

> The sheets to be annexed to the report above mentioned comprise five different forms, designated Form A to Form E, both inclusive, and upon these sheets the carrier making the report is required to show in detail the name, post-office address, and occupation of *each employee* who was either on duty for a period of time in excess of that contemplated by the act or who had

not been off duty after any period of service for the length of time prescribed by the act, and in the case of *every such employee* the carrier was required to state the cause of and the facts, if any, explanatory of the excess service thus rendered by the employee. * * *

If, therefore, the said order be permitted to stand and your orator be required to make the report called for herein, it will, in the event of *any infraction* of the act by its officers or agents, be obliged to furnish under oath information of *such infraction* or violation, and will, consequently, be required not only to disclose actions of its officers or agents which will subject them to the penalties prescribed by the act, but will also subject it to like penalties because of the provision contained in the act that in all prosecutions thereunder the carrier shall be deemed to have had full knowledge of all acts of all its officers and agents. * * *

The said order necessarily contemplates and requires that infractions of the law which may occur—and it is inevitable that through *oversight, inadvertence, or mistake* such infractions will occur—shall be made the subject of report to your orator by the officers concerned in or responsible for such infractions, which said reports will become part of the records of your orator, and as such will be open to the inspection of the said Interstate Commerce Commission * * *.

The opinion by Mr. Justice Hughes begins:

This is a bill in equity to annul an order made by the Interstate Commerce Commis-

> sion on March 3, 1908, and for injunction. The order required the carriers within the provisions of the act of Congress of March 4, 1907 (ch. 2939, 34 Stat., 1415), to make monthly reports under oath *showing the instances* where employees subject to that act had been on duty for a longer period than that allowed. [Our italics.]

Further on in the course of the opinion:

> The bill alleges that in the original forms prescribed the carrier was required to show the employees who were " either on duty for a period in excess of that contemplated by the act or who had not been off duty after any period of service for the length of time prescribed by the act, and *in the case of every such employee* the carrier was required to state the cause of and the facts, if any, explanatory of the excess service thus rendered by the employee." [Our italics.]

The Supreme Court in *Baltimore & Ohio* v. *Interstate Commerce Commission* therefore decided that the order of the Interstate Commerce Commission in question here is valid. This holding also involves the conclusion that the order is obligatory upon the carriers to the same extent as if it were a congressional enactment. The importance of this holding in its application to the case at bar is emphasized by the expressions "*specific instances,*" "*full information*" in the opinion and by the fact that the record shows that the attention of the court was called to the requirement that "individual instances" of excess service should be reported.

And therefore it is fairly deducible from the decision in the case of *Baltimore & Ohio Railroad* v. *Interstate Commerce Commission* that the requirement of a report of each case of service in excess of the statutory period is obligatory upon carriers.

Is the obligation of the carrier fulfilled by any form of report which does not set forth "all instances"?

The letter of the order is not complied with if less than all instances are reported. No instance is negligible when, as in the omitted instance in the case at bar, it is *in itself* a violation of a statute. It can not be presumed that violations of any law are of such volume and frequency as to make unimportant the omission of specific instances from a required governmental report. A report which does not comply with the terms of the order is not a report which complies with the law.

If a report which does not comply with the terms of the order requiring it, in that it omits one instance of law violation, is still a report, where can the line be drawn as to the number of omissions of law violation which will make such defective compliance a violation of the obligation to report?

The obligation to file reports covers a large field of governmental regulation:

> *Eagle Insurance Co.* v. *Ohio* (153 U. S., 446).
>
> *Mayor of City of New York* v. *Miln* (11 Pet., 102).
>
> *St. Joseph* v. *Levin* (128 Mo., 588).

Commonwealth v. *Tenth Mass. Turnpike Co.* (11 Cush., 171).

People v. *Buffalo Stone & Cement Co.* (15 L. R. A., 240).

Attorney-General v. *Petersburg, etc., R. R. Co.* (28 N. C., 456).

Louisville, etc., Ferry Co. case (104 Ky., 726).

Bank of Saginaw v. *Pierson* (112 Mich., 410).

Henderson Bridge Co. v. *Commission* (99 Ky., 623).

Eyre v. *Harmon et al.* (192 Cal., 580).

People v. *C. I. & L. Ry. Co.* (223 Ill., 581).

In many of the foregoing cases the charter of the corporation has been forfeited by failure to make a required report.

One of the Kentucky cases just cited was as to the validity of a requirement of a report from pawnbrokers. (*St. Joseph* v. *Levin.*) Of what value would a report from pawnbrokers be if particular instances of the receipt of goods possibly stolen could be omitted without impairing the validity of such a report?

But here there is a distinction which is gravely important between the case at bar and all the other reported cases, including the cases cited by the plaintiff in error. And this distinction is to be emphasized.

The instances here required to be reported are each a possible violation of law, they are each cases of employment in excess of the period fixed by law,

and unless excused by the specific exceptions in the act each instance is in itself a violation of a law enacted in the interest of the safety of employees and the traveling public.

Unless excused under the proviso the excess service of *each* employee is a statutory violation. (*Missouri, Kansas & Texas R. R. Company* v. *United States,* 231 U. S., 112.)

Where an enumeration and specification of "*all* instances" of the possible violation of a statute are required of a corporation in a report, the omission of one or several of its violations of law from a document purporting to be its report, such document can not be accepted as a compliance with a valid obligation to report all instances. The omission of one of the vital elements of a report lawfully required, affects, impairs, and destroys its validity.

The integrity of the whole system of reports upon this subject would be impaired if there is any looseness admitted into the system by which errors, mistakes, and omissions are judicially declared to be negligible.

In *Northern Pacific Ry. Co.* v. *United States* (213 Fed., 162, Eighth Circuit Court of Appeals) the court suggests that if Congress had intended to give this act the construction contended for by the Government it might have modified the clause which describes and limits the offense, but as it did not do so, the act can not be so construed that words

may be introduced therein or expunged therefrom by the courts to give it the meaning contended for.

But does not the opinion of that court necessarily read into the obligation of the carrier to report "*all* instances" an exception which covers without very definite limits one *or more* "omissions in good faith," "omissions resulting from incorrect information," "unintentional mistakes or omissions," "an honest error of law or mistake of fact," and instead of a report of all instances permit "the filing in good faith of an *incomplete* or *incorrect report*"?

The obligation of the statute and the order lawfully issued thereunder requires a *complete* report to furnish "full information" (*Baltimore & Ohio* v. *United States*) to the Commission.

Under the rule *invoked* by Judge Sanborn there is no authority which can authorize the limitation, qualification, or exception which his opinion applies to the general words of the obligation of carriers.

Statutes of this character are not affected by questions of good faith, honest intent, or mistakes of fact or law on the part of those to whom they apply. (*Chicago, Burlington & Quincy Railway Co.* v. *United States,* 220 U. S., 559; *Armour Packing Company* v. *United States,* 209 U. S., 56, 85.)

This is not a criminal case. It is a civil action in the nature of the action for debt to recover penalties which Congress in its wisdom saw fit to impose upon railroads to secure compliance with certain

specified regulations. Ignorance of the law does not excuse. A lack of wrongful intent does not excuse. Any mistake of fact does not excuse.

The duty of compliance is absolute.

A report which for any of the foregoing reasons is incomplete is not a compliance with the law. The legal obligation is only satisfied by a complete report. Any part less than the whole is not equal to the whole.

The incompleteness in any material respect of a report may well be held to deprive such a document of its status as a report. And the omission of one or more law violations may properly be held to be a material omission.

No such omission can be held to be of such immateriality as to be inconsequential in the determination of the question whether or not it is or is not a report.

When the Supreme Court has said that a requirement of a report of *all* instances is valid *where does any other court get the authority to say that a report of a less number than all instances is a compliance with this requirement?*

The interpretation contended for by the Government is the generally accepted interpretation of this statute as shown by the judgment of the District Courts of the United States in the following cases in many of which the railroads by confessions of judgment accepted the interpretation of the prosecution.

Penalties have been imposed by the courts for SEVEN HUNDRED AND SIXTY-ONE VIOLATIONS, as follows:

Penalties imposed for failure to file reports.

Court.	Railroad.	Judgment.
Eastern district of Arkansas	Chicago, R. I. & P	$500
Do	Mo. & North Ark	200
Western district of Arkansas	Chicago, R. I. & P	100
District of Idaho	Oregon Short Line	3,000
Northern district of Illinois	Illinois Central	300
Do	do	3,000
Do	Chicago & Alton	2,000
Do	C. M. & St. P	1,000
Do	Chicago & E. Ill	1,500
Southern district of Illinois	Wabash	1,000
District of Indiana	Chicago, I. & L	500
Southern district of Iowa	C. M. & St. P	200
Eastern district of Kentucky	Chesapeake & Ohio	1,000
Western district of Louisiana	Kansas City Southern	1,000
District of Maine	Canadian Pacific	500
Do	Bangor & Aroostook	3,000
Eastern district of Michigan	Grand Trunk Western	3,000
Do	Pere Marquette	3,000
District of Minnesota	Northern Pacific	200
Do	C. M. & St. P	500
Do	M. St. P. & S. S. M	3,000
Northern district of Mississippi	Yazoo & Miss. Val	200
Southern district of Mississippi	Illinois Central	1,000
Eastern district of Missouri	Wabash	1,000
Do	Illinois Southern	1,500
Western district of Missouri	St. L. & S. F	1,000
District of Montana	Northern Pacific	1,000
District of Nebraska	Chicago, B. & Q	300
District of New Mexico	Colorado & Southern	3,000
District of North Dakota	Great Northern	1,000
Northern district of Ohio	Baltimore & Ohio	3,100
Southern district of Ohio	Kanawha & Michigan	3,000
Do	Detroit, Toledo & I	3,000
Western district of Oklahoma	Chicago, R. I. & P	500
Do	Midland Valley	3,000
Do	Mo., Kansas & Texas	3,000
District of South Dakota	C. M. & St. P	200
Do	do	2,400
Western district of Tennessee	Illinois Central	500
Do	Yazoo & Miss. Val	400
Eastern district of Texas	M. K. & T. of T	3,000
Do	Houston & Texas Central	3,000
Western district of Texas	Texas Central	3,000
Do	G. H. & S. A	3,000
District of Vermont	Central Vermont	3,000
Western district of Washington	C. M. & P. S	500
Eastern district of Wisconsin	C. M. & St. P	1,000
District of Wyoming	Union Pacific	2,000
Total		76,100

An interpretation of an act which has been so "widely accepted and acted upon by the courts" ought not to be now disturbed. "A contrary course would cause infinite uncertainty, if not mischief, in the administration of the law in the Federal courts." (Harlan, Justice, in *Chicago, Burlington & Quincy* v. *United States,* 220 U. S., 559.)

The subject matter of such a report is "all instances" of excess service. *If* there are reports called for by governmental authority as to which by the very nature of the subject matter there is not the practicability of obtaining absolute accuracy in reports to official authority, this can not in any manner affect reports called for upon a subject matter which is fully apparent from records required to be kept by the carrier and all that is necessary to secure the full report of all instances is the ability to make a correct and complete transcription from these records.

The impracticability of the suggestion of the opinion in the *Northern Pacific case* to the *possibility* of collection of unjust and oppressive amounts as penalties, if the Government's contention is correct as to the interpretation of this statute, attention need be called only to the proposition that if failure to file one omitted case of excess service in a monthly report was a failure to file a report then there was a possibility of penalties for failure to file as to each of the cases of excess service which were reported.

No one who has given a moment's consideration to the statute would for a moment contend that there was any more than one penalty for each day's failure to file a complete report.

But if the act *is* susceptible of a construction permitting the large penalties suggested in that opinion, there is a complete answer to the contention of possible injustice and oppression. It is this:

" THE RAILROADS HAVE ALREADY AN EFFICIENT WAY OF AVOIDING THESE SEVERE PENALTIES, NAMELY, BY OBEYING TRULY THE LAWS OF THE STATE (NATION). IF THEY DO THIS, THEY ARE IN NO DANGER OF THE PENALTY; IF THEY DO NOT, THEY ARE IN NO CONDITION TO COMPLAIN OF THE LAWS." (*B. C. & N. Ry. Co.* v. *Dey,* 82 Iowa, 312.)

The learned counsel for plaintiff in error argue as to the harshness and injustice of suits of this character for failure to file complete reports, calling only for money penalties from the corporation and seem to maintain and even urge that the much more stringent and harsh method be adopted of prosecutions of the railroad officials in the criminal courts for perjury.

There may be some practical difficulties in the latter course, but if it was pursued by the Government it would be likely to meet with even more strenuous criticism than is indulged in in plaintiff in error's brief.

When reports fail to comply with the legal obligation of the carrier as established by the Supreme Court such actions as the present are likely

to prove efficacious without forcing the Government to place any officials of the carrier in the criminal dock.

Counsel quote in their brief (p. 22) the suggestion of District Judge Toulmin that any violation of the oath of the master of a vessel "might subject him to *severer punishment* than the imposition of the penalty" in that case and "*would be a greater assurance,* if assurance were necessary, that the information furnished was correct and true in every respect, or believed to be true."

The "severer punishment" does not seem to be called for in cases of this character and the *greater assurance* of accuracy caused by the liability of a prosecution of an official for making a false oath is no assurance at all where negligent mistake in making official reports is all that can be claimed.

The law of perjury takes no cognizance of mere negligence in the preparation of a report. It looks only to wrongful intent. Lacking such intent a report may be loose and incomplete and prolific in errors and still the criminal law could not be set in motion.

The only practical compulsion to accuracy in governmental reports of this character is the penal action for failure to file a complete report.

AS TO THE ALLEGED NONSERVICE OF FORMS.

No statute made the service of the established forms a prerequisite to the effectiveness of the order of the Interstate Commerce Commission.

When that order was officially established it was of universal application to all railroads independent of the question of service.

Railroads are obliged to take notice of regulations which are of such a public nature that the courts take judicial notice of them without proof. (*Caha* v. *United States,* 152 U. S., 211, 221, 222.)

The provision in the order for service of the same upon carriers was directory and not mandatory.

As to this order it may be said, as Judge Cooley said of statutes, " that particular provisions may be regarded as directory; merely by which is meant that they are to be considered as giving directions which ought to be followed, but not so limiting the power in respect to which the directions are given that it can not be effectively exercised without observing them." (Cooley on Constitutional Limitations, 74.)

Lord Mansfield said in *Rex* v. *Luxdale* (1 Burr., 447) that " There is a known distinction between circumstances which are of the essence of a thing required to be done * * * and clauses merely directory."

Moreover, the deposition in the record is not by itself sufficient to overcome the legal presumption of due performance of duty by those charged with the official direction in the order to make service upon the carriers.

> " The general experience that a rule of official duty or a requirement of legal conditions is fulfilled by those upon whom it is

> incumbent has given rise occasionally to a presumption of due performance." (4 Wigmore on Evidence, sec. 2534.)

That one of the representatives of this railroad did not receive the forms in question is not proof that no proper official received them.

The fact that the railroad has the forms and has been continuously using them ever since the order became operative is amply sufficient to sustain the presumption that the officials charged with the duty of serving the forms did so upon some authorized official of the railroad.

This action is not for noncompliance by the carrier with the obligation to use the established forms. The action in this case is for noncompliance with the order requiring monthly reports by the carriers of all instances where employees subject to said act have been on duty for periods longer than those provided in said act.

To make this matter clear, we have printed in the appendix copies of all the orders of the Interstate Commerce Commission upon this subject since the passage of the act of March 4, 1907.

The first order was that of March 3, 1908, and this was the order in effect at the time of the institution of the proceedings in the case of *Baltimore & Ohio* against *Interstate Commerce Commission* (221 U. S., 612).

Because of a contention made in the *Baltimore & Ohio case* that the order of the 3d of March, 1908, had been passed one day before the hours-

of-service law became operative, the Commission, on the 28th day of June, 1911, passed a second order which was identical in terms and obligation with the order of March 3, 1908, with the exception that it called for the first report for the month of July, 1911. It is for violation of the second order that this suit is brought.

There was, on the 8th of April, 1912, an order covering the *details of forms* to be used, but which *in no manner affected* the *terms and obligations* of the *previous* order of June 28, 1911.

The record in this case discloses that the forms prescribed by the Commission's order establishing forms on the 8th of April, 1912, were served upon the carrier in this case and that it received at the time forms which are the identical forms in use and required to be used at the time of the violation in this case, but the *action* is brought for violation of the *order of June 28, 1911,* for failure to comply with *its* provision requiring carriers to "report within 30 days after the end of each month all instances where said employees, subject to said act, have been on duty for a longer period than that provided in said act."

Respectfully submitted.

FRANCIS A. GARRECHT,
United States Attorney.
PHILIP J. DOHERTY,
Special Assistant United States Attorney.

APPENDIX.

ORDERS OF THE INTERSTATE COMMERCE COMMISSION.

At the General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 3d day of March, A. D. 1908.

Present:

MARTIN A. KNAPP,
JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANCIS M. COCKRELL,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
} Commissioners.

IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The method and form of monthly reports of hours of service of employees upon railroads subject to the act of March 4, 1907, having been considered by the Commission:

It is ordered, That all carriers subject to the provision of the act entitled " An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act.

It is further ordered, That the accompanying forms entitled " Interstate Commerce Commission Hours of Service Report," and the method embodied in the instructions therein set forth, be and the same are hereby adopted and prescribed; and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of April, 1908.

And it is further ordered, That copies of said forms, together with a copy of this order, be served by registered mail upon all common carriers subject to said act.

A true copy:

EDW. A. MOSELEY,
Secretary.

At a General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 28th day of June, A. D. 1911.

Present:

JUDSON C. CLEMENTS,
CHARLES A. PROUTY,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
} Commissioners.

IN THE MATTER OF THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The method and form of monthly reports of hours of service of employees upon railroads subject to the act of March 4, 1907, having been considered by the commission:

It is ordered, That all carriers subject to the provisions of the act entitled "An act to promote the safety of employees and travelers upon railroads by limiting the hours of service of employees thereon," approved March 4, 1907, report within 30 days after the end of each month, under oath, all instances where employees subject to said act have been on duty for a longer period than that provided in said act.

It is further ordered, That the accompanying forms entitled "Interstate Commerce Commission Hours of Service Report," and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed;

and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1911.

And it is further ordered, That copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act.

A true copy:

JUDSON C. CLEMENTS,
Chairman.

At the General Session of the INTERSTATE COMMERCE COMMISSION, held at its office in Washington, D. C., on the 8th day of April, A. D. 1912.

CHARLES A. PROUTY,
JUDSON C. CLEMENTS,
FRANKLIN K. LANE,
EDGAR E. CLARK,
JAMES S. HARLAN,
CHARLES C. MCCHORD,
BALTHASAR H. MEYER,
} Commissioners.

IN THE MATTER OF ALTERATION IN THE METHOD AND FORM OF MONTHLY REPORTS OF HOURS OF SERVICE OF EMPLOYEES ON RAILROADS SUBJECT TO THE ACT OF MARCH 4, 1907.

The matter of alteration in the method and form of monthly reports of hours of service of em-

ployees upon railroads subject to the act of March 4, 1907, being under consideration:

It is ordered, That the accompanying forms entitled "Interstate Commerce Commission Hours of Service Report," and designated as—

Form No. 1.—Oath and summary for use when there is excess service.

Form No. 8.—Oath for use when there is no excess service.

Form No. 2.—Employees on duty more than 16 consecutive hours.

Form No. 3.—Employees returned to duty after 16 hours continuous service, without 10 consecutive hours off duty.

Form No. 4.—Employees returned to duty, after aggregate service of 16 hours, without 8 consecutive hours off duty.

Form No. 5.—Employees continued on duty after aggregate service of 16 hours.

Form No. 6.—Employees at continuously operated day-and-night offices, who dispatch, report, transmit, receive, or deliver orders affecting train movements, and who were on duty more than 9 hours in any 24-hour period.

Form No. 7.—Employees at offices operated only during the daytime, or not to exceed 13 hours in a 24-hour period, who dispatch, report, transmit, receive, or deliver orders affecting train movements, and who are on duty for a longer period than 13 hours in any 24-hour period—

and the method embodied in the instructions therein set forth, be, and the same are hereby, adopted and prescribed; and all common carriers subject to said act are hereby notified to use and follow the said prescribed forms and method in making

monthly reports of hours of service of employees on duty for a longer period than that named in said act, commencing with and making the first report for the month of July, 1912.

And it is further ordered, That copies of said forms, together with a copy of this order, be forthwith served upon all common carriers subject to said act.

By the Commission.

[SEAL.] JOHN H. MARBLE,
Secretary.

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